

X

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

No. D-5626

BALDEV DAVID SINGH, M.D.)
1348 W. 18th Place)
Yuma, AZ 85364)

OAH No. N-9401193

Physician's & Surgeon's)
Certificate No. C-40540)

Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on September 29, 1994.

IT IS SO ORDERED August 30, 1994.



ALAN SHUMACHER, Secretary-Treasurer
DIVISION OF MEDICAL QUALITY
Medical Board of California

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Certificate No. C-40540)	
)	
)	
Respondent.)	

PROPOSED DECISION

On May 2, 1994, in Sacramento, California, Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Gail Heppell, Deputy Attorney General, represented the complainant.

James Jay Seltzer, Attorney at Law, represented respondent Baldev David Singh, M.D.

Evidence was received and the record was left open for the receipt of written argument from the parties. On May 18, 1994, respondent's brief was received and marked Exhibit B for identification. On June 13, 1994, complainant's brief was received and marked Exhibit 4 for identification. The matter was thereupon submitted.

FINDINGS OF FACT

I

Complainant Dixon Arnett, Executive Director of the Medical Board of California, made and filed the accusation solely in his official capacity.

II

On July 2, 1992, the Medical Board of California issued Physician's and Surgeon's Certificate Number C-40540 to respondent Baldev David Singh, M.D. The certificate is in full force and effect.

III

On or about July 18, 1992, respondent and the Executive Officer of the Board of Medical Examiners of the State of Arizona executed a document entitled "Stipulation and Order". That document is attached hereto as Attachment A and by this reference incorporated herein.

IV

Although no testimony was provided at the administrative hearing and the parties agreed that the primary legal issue is whether what occurred in Arizona provides the basis for discipline against respondent's California physician's and surgeon's license, documents submitted in evidence by respondent do shed some light on the basis for the Arizona action and what has occurred since that time. In 1992, it was reported to the Board of Medical Examiners of the State of Arizona that respondent may be an alcoholic. The Arizona Board so determined and respondent began treatment. He had been under what was described by his treating psychiatrist as "exceedingly high stress" during the two years preceding his treatment and recognized that he was dealing with the stress by drinking too much in the evenings. His psychiatrist has been following him since September 4, 1992, and sees him once a month for about a hour. He has been diligent about keeping appointments and following through with his prescribed medications which are Zoloft and Buspar. He has continued to work as a physician and his psychiatrist reports no evidence of impaired judgment, concentration or capacity to think. He has remained sober and attends Alcoholics Anonymous.

Respondent has been in full compliance with the Monitored Aftercare Treatment Program required by the Stipulation and Order. He has been cooperative and positive towards his recovery. All of his random urine tests for alcohol and

controlled substances have been negative. He has never failed to appear for a urine sample request.

DETERMINATION OF ISSUES

I

Based on the findings in paragraph III of the Findings of Fact, respondent is subject to discipline pursuant to sections 2234 and 2305 of the Business and Professions Code.

II

Section 2305 of the Business and Professions Code reads:

"The revocation, suspension, or other discipline by another state of a license or certificate to practice medicine issued by the state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, to a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against such licensee in this state" (emphasis added).

III

Respondent contends that what occurred in the State of Arizona was not a disciplinary action. In the final paragraph of the Stipulation and Order the State of Arizona, in compliance with the Americans With Disabilities Act, proclaims that the Order "is not a disciplinary action of the Board of Medical Examiners, but is merely a monitoring procedure, voluntarily entered into by (respondent) and the Board to assure (his) ability to maintain a chemical free lifestyle."

By the terms of the Stipulation and Order, the document was not reported to the Federal National Practitioner's Data Bank but was provided to the Federation of State Medical Boards and has been available to any other interested party requesting public information regarding Board action relating to respondent.

In a letter submitted in evidence, the Assistant Director for Licensure and Administration of the Arizona Board of Medical Examiners asserted that the Stipulation and Order was not a disciplinary action and that the Arizona Board had taken no disciplinary actions against respondent.

Respondent, in further support of his position, points out that he voluntarily entered into the Stipulation and Order and that he was never charged with violation of any Arizona law, and certainly none which involves endangering his patient's health or welfare.

IV

In a case with a similar factual context, two doctors of podiatric medicine entered into a consent decree in Nevada by which the Nevada State Board of Podiatry revoked their licenses and stayed the revocation for three years upon certain terms and conditions of probation. No evidence was presented on the allegations of fraud and incompetence within the administrative complaint and in the consent decree the doctors made no admission of wrongdoing. The doctors challenged the application of section 2305 of the Business and Professions Code. In rejecting the challenge, the Court noted that section 2305 applies by its terms to any discipline imposed by another state on the holder of a license or certificate to practice medicine issued by that state and thus includes acquiescence by signing a consent decree to disciplinary action without any admission of the charges. Marek v. Board of Podiatric Medicine, (1993) 16 Cal.App.4th 1089, 1096. The Court noted, "The focus of section 2305 is the mere fact that a measure of discipline was imposed on the licensee and not how it was imposed by the foreign jurisdiction". Marek v. Board of Podiatric Medicine, (1993) 16 Cal.App.4th 1089, 1097.

V

There remains the issue whether what occurred in Arizona constitutes "other discipline by another state of a license or certificate to practice medicine" as that phrase is used in section 2305. Notwithstanding the recitation in the last paragraph of the order and the assertion of the Arizona board representative, the terms of the Stipulation and Order clearly indicate that it does constitute "other discipline". By the terms of the Order, respondent agreed to significant restrictions of his personal liberty and his medical practice. He agreed to participate in a specified rehabilitation program for substance abuse. He agreed to completely abstain from the use of drugs including over the counter drugs absent a prescription and to keep a record of such prescriptions. He agreed to witness random biological fluid testing. He agreed to pay the costs of the monitoring and required therapy. In short, he agreed to the fairly typical terms and conditions of probation imposed by the Medical Board of California in conjunction with discipline imposed in this state. Perhaps most significantly, the Order provides that a violation of any of the terms recited constitutes unprofessional conduct and may result in disciplinary action.

Interpreting section 2305 to include the Arizona Stipulation and Order is consistent with the obvious legislative intent underlying the enactment of this provision and the Medical Practice Act in general-to protect California citizens by regulation of its health practitioners. Marek v. Board of Podiatric Medicine, (1993) 16 Cal.App.4th 1089, 1098; Shea v. Board of Medical Examiners, (1978) 81 Cal.App.3d 564, 577. The Stipulation and Order issued by the State of Arizona reflect that respondent suffers from a serious substance abuse problem which if unresolved could very well endanger his patients. Section 2305 was obviously enacted to authorize the Medical Board of California to protect the public of this state when alerted that a licensee may be a danger to the public as evidenced by sanctions imposed against the licensee by a similar regulatory agency in a sister state or the Federal government. The use of the broad language "or other discipline" reflects the legislative intent to invest in the Medical Board of California the authority to act based on any sanction, no matter how titled, that might reasonably be interpreted as disciplinary.

ORDER

The certificate issued to respondent Baldev David Singh, M.D. is revoked.

However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.
2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
3. Respondent shall comply with the Division's probation surveillance program.
4. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

5. The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.
6. Upon successful completion of probation, respondent's certificate will be fully restored.
7. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
8. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by section 4211 of the Business and Professions Code, or any drugs requiring a prescription.
9. Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.
10. Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of controlled substances involved, and 4) the indications and diagnosis for which the controlled substance was furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Division or its designee, upon request.

11. Respondent shall abstain completely from the use of alcoholic beverages.
12. Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Division or its designee.
13. Within 30 days of the effective date of this Decision, respondent shall enroll and participate in the Division's Diversion Program until the Division determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent.
14. Within 60 days of the effective date of this Decision, respondent shall take and pass an oral or written examination, in a subject to be designated and administered by the Division or its designee. If respondent fails this examination, respondent must take and pass a re-examination consisting of a written as well as an oral examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved.

Respondent shall not practice medicine until respondent has passed the required examination and has been so notified by the Division in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

15. Within 30 days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Division or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed psychiatrist who shall furnish a psychiatric report to the Division or its designee.

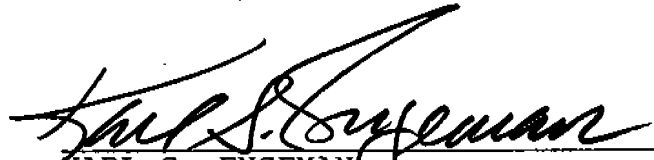
If respondent is required by the Division or its designee to undergo psychiatric treatment, respondent shall within 30 days of the requirement notice submit to the Division for its prior approval the name and qualifications of a psychiatrist of respondent's choice. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment

until further notice from the Division.
Respondent shall have the treating psychiatrist
submit quarterly status reports to the Division.

Respondent shall not engage in the practice of
medicine until notified by the Division of its
determination that respondent is mentally fit to
practice safely.

Dated:

July 11, 1994


KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

1. DANIEL E. LUNGREN, Attorney General
of the State of California
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6 Attorneys for Complainant
7

8 BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the)	No. D-5626
Accusation Against:)	
12)	<u>ACCUSATION</u>
BALDEV DAVID SINGH, M.D.)	
13 1348 W. 18th Place)	
Yuma, AZ 85364)	
14)	
Physician's & Surgeon's)	
15 Certificate No. C-40540)	
16)	
Respondent.)	

17
18 Dixon Arnett, for causes for discipline, alleges:

19 1. Complainant Dixon Arnett makes and files this
20 accusation solely in his official capacity as Executive Director
21 of the Medical Board of California (hereinafter referred to as
22 the "Board") and not otherwise.

23 2. On July 2, 1992, the Medical Board of California
24 issued Physician's and Surgeon's Certificate Number C-40540 to
25 Baldev David Singh, M.D. The certificate expired on
26 September 30, 1993.

27 / / /

28 / / /

1 3. Under Business and Professions Code section 2234,
2 the Division of Medical Quality shall take action against any
3 licensee who is charged with unprofessional conduct.

4 4. Under Business and Professions Code section 2305,
5 the revocation, suspension, or other discipline by another state
6 of a license or certificate to practice medicine issued by the
7 state shall constitute unprofessional conduct against such
8 licensee in this state.

9 5. Respondent has subjected his physician's and
10 surgeon's certificate to discipline under Business and
11 Professions Code sections 2234 and 2305 in that on or about July
12 18, 1992, respondent entered into a stipulation and order with
13 the Arizona State Board of Medical Examiners to undergo an
14 indefinite monitored treatment program for substance abuse. (See
15 attached Exhibit "A.")

16 WHEREFORE, complainant prays that a hearing be held and
17 that the Medical Board of California make its order:

18 1. Revoking or suspending Physician's and Surgeon's
19 Certificate Number C-40540, issued to Baldev David Singh, M.D.;

20 2. Prohibiting Baldev David Singh, M.D. from
21 supervising physician assistants; and

22 3. Taking such other and further action as may be
23 deemed proper and appropriate.

24 DATED: January 7, 1994


25
26 
27 DIXON ARNETT, Executive Director
28 Medical Board of California
Department of Consumer Affairs
State of California

EXHIBIT A

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

In the Matter of

BALDEV D. SINGH, M.D.

Holder of License No. 16824
For the Practice of Medicine
In the State of Arizona.

STIPULATION AND ORDER

In confirmation of the voluntary agreement made between
BALDEV D. SINGH, M.D. and the BOARD OF MEDICAL EXAMINERS OF
THE STATE OF ARIZONA ("Board"), by and through DOUGLAS N.
CERF, its Executive Director;

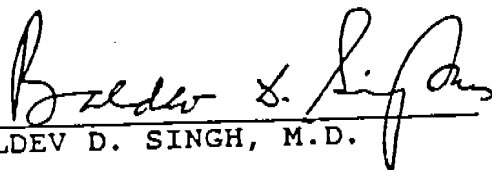
IT IS HEREBY STIPULATED AND AGREED between BALDEV D.
SINGH, M.D., and the Board, pursuant to A.R.S. §32-
1451(G)(5), that the accompanying Order shall be entered in
the above-entitled matter and be effective as of July 18,
1992. BALDEV D. SINGH, M.D. acknowledges that any violation
of said Order constitutes unprofessional conduct within
A.R.S. §32-1401(21)(r), and may result in disciplinary
action pursuant to A.R.S. §32-1451.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA


DOUGLAS N. CERF
Executive Director

Dated: July 18, 1992

BALDEV D. SINGH, M.D.
License No. 16824


BALDEV D. SINGH, M.D.

Dated: 7/18/92
SS # 302-54-7735

Pursuant to the foregoing stipulation and upon completion of BALDEV D. SINGH, M.D.'s rehabilitation treatment program recognized by the Board; and, in order to protect the public and ensure the physician's ability safely to engage in the practice of medicine, the Board enters the following Order:

ORDER

1. BALDEV D. SINGH, M.D. will immediately participate in a Monitored Aftercare Treatment Program sponsored and approved by the Board. BALDEV D. SINGH, M.D. shall instruct his therapist from the Program, as well as any other therapist, to release to the Board of Medical Examiners, upon its request, any and all records relating to his treatment and to submit quarterly reports to the Board of Medical Examiners regarding his diagnosis, prognosis and recommendation for the continuing care, treatment and supervision of BALDEV D. SINGH, M.D.; said reports to be submitted on or before the 15th day of March, May, September and December of each year, commencing on or before the 15th day of September, 1992.

2. BALDEV D. SINGH, M.D. shall participate in ninety (90) 12-step meetings appropriate for substance abuse and acceptable to the Board in ninety (90) days from the effective date of this Order.

3. Following completion of the requirements outlined in Paragraph 2 above, BALDEV D. SINGH, M.D. shall participate in a 12-step recovery program appropriate for substance

abuse as determined by his treating therapist, and attend a minimum of three (3) weekly meetings.

4. BALDEV D. SINGH, M.D. shall obtain a sole treating physician who shall be approved by the Board. BALDEV D. SINGH, M.D. shall advise his treating physician of his rehabilitation efforts and provide a copy of this document to his approved treating physician. BALDEV D. SINGH, M.D. shall further advise any health care practitioner providing medical care and treatment of his chemical misuse problem.

5. BALDEV D. SINGH, M.D. shall abstain completely from the consumption of alcoholic beverages.

6. BALDEV D. SINGH, M.D. shall take no drugs or medications whatever (except for plain aspirin and/or plain acetaminophen), whether controlled substances, prescription-only drugs or over-the-counter preparations, unless such drug or medication was prescribed for him by his treating physician.

7. BALDEV D. SINGH, M.D. shall comply immediately with requests from the Board or the Program Director of the Monitored Aftercare Treatment, or their agents or designees, including but not limited to his therapist, to submit to witnessed random biological fluid collection, and authorizes any person or organization conducting tests on these collected samples to provide testing results to the Board and the Monitored Aftercare Treatment Program Director.

8. BALDEV D. SINGH, M.D. shall maintain a log of any and all medications whatever (including plain aspirin and/or

plain acetaminophen), whether controlled substances, prescription-only drugs or over-the-counter preparations prescribed for him by his treating physician and shall make such log available to the Board, its agents or designees upon request. Such log, at a minimum, shall include the following:

- (a) The medication taken;
- (b) The date and time the medication was taken;
- (c) The name of the prescribing physician;
- (d) The reason for the medication.

9. BALDEV D. SINGH, M.D. agrees to pay all charges from the Board of Medical Examiners, or its designee (including, but not limited to, the Monitored Aftercare Treatment Program) for conducting biological fluid testing, as well as charges for group therapy sessions conducted by the Monitored Aftercare Treatment Program.

10. BALDEV D. SINGH, M.D. shall submit to mental, physical or medical competency examinations, or any combination thereof, at such times and under such conditions as directed by the Board to assist the Board in monitoring his ability to safely engage in the practice of medicine, or his compliance with the terms of this Order.

11. BALDEV D. SINGH, M.D. shall submit to any therapy ordered by the Board, or recommended by his therapist from the Monitored Aftercare Treatment Program.

12. BALDEV D. SINGH, M.D. shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of Arizona.

13. BALDEV D. SINGH, M.D. shall appear in person before the Board for interviews upon request, at various intervals and with reasonable notice. He shall immediately advise the Board of any change in his office or home addresses, and shall further immediately advise the Board of any plans he makes to be away from his office or home for more than five (5) days.

14. The State of Arizona in compliance with the Americans With Disabilities Act proclaims that this is not a disciplinary action of the Board of Medical Examiners, but is merely a monitoring procedure, voluntarily entered into by BALDEV D. SINGH, M.D. and the Board to assure his/her ability to maintain a chemical free lifestyle. This document therefore will not be reported to the Federal Government's National Practitioner's Data Bank. However, a copy of this Order will be provided to the Federation of State Medical Boards of the United States and any other interested party requesting public information regarding Board actions specifically related to BALDEV D. SINGH, M.D.

ENTERED this 18 day of July, 1992.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

[S E A L]

By 
DOUGLAS N. CERF
Executive Director